

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 3 Improper Business Practices

Subject: 3.3 Anti-Kickback Act

PURPOSE: This standard practice (SP) outlines Laboratory policy and related procedures governing the offering or solicitation of kickbacks.

POLICY: A Laboratory employee, subcontractor, or subcontractor employee may not provide or attempt to provide a kickback; solicit, accept, or attempt to accept any kickback; or include, directly or indirectly, the amount of any kickback in a subcontract price charged by a subcontractor or in a contract charged by the Laboratory to the Department of Energy (DOE) or other federal agency.

SCOPE: This SP applies to all Laboratory subcontract activities.

DEFINITIONS:

Act The Anti-Kickback Act of 1986 (41 U.S.C. 51-58).

Kickback Kickback means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, to the Laboratory, a Laboratory employee, a Laboratory subcontractor, or an employee of a Laboratory subcontractor to improperly obtain or reward favorable treatment in connection with the Prime Contract with DOE or in connection with a Laboratory subcontract.

PROCEDURES:

Reporting Requirements Kickbacks offered to, solicited by, or accepted by Laboratory employees must be reported to the Procurement Manager, who will report the incident to the appropriate Laboratory-designated authority. Employees must cooperate fully with any federal agency investigating a possible violation of this policy.

Offset Against Subcontract Price The Laboratory may offset the amount of a kickback against the amount owed to a subcontractor under a subcontract.

Failure to Comply Failure to comply with policies and procedures pertaining to kickbacks may result in disciplinary action pursuant to the Laboratory's *Regulations and Procedures Manual, Section 2.05, Management/Employee Relations*, up to and including termination of employment and the application of criminal penalties under the Act.

Exceptions This policy does not preclude the acceptance of ordinary business courtesies, unsolicited advertising novelties or promotional material, modest entertainment in connection with attendance at widely attended gatherings, loans from banks or other financial institutions on customary terms, or free transportation in customary form on official business.

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CLAUSE: The substance of the Anti-Kickback Procedures clause (FAR 52.203-7), excluding paragraph (c)(1), will be included in all written solicitations and subcontracts exceeding the small purchase threshold, except those for commercial items.

RESPONSIBILITIES:

**Procurement
Specialist**

The procurement specialist is responsible for:

- Not accepting or soliciting kickbacks;
- Reporting to the Procurement Manager any instances where a kickback has been offered; and
- Cooperating in any investigation of a possible violation of the Anti-Kickback Act.

**Procurement
Manager**

The Procurement Manager is responsible for reporting incidents to the Laboratory-designated authority.

REFERENCES: Prime Contract Clause I.5 - Anti-Kickback Procedures